

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

TRACIE D. WILLARD, )  
                        )  
Plaintiff,           )  
                        )  
v.                     )       Cause No. 1:10CV142 RWS  
                        )  
MICHAEL J. ASTRUE, )  
Commissioner of Social Security, )  
                        )  
Defendant.           )

**MEMORANDUM AND ORDER**

Plaintiff Tracie Willard filed this complaint challenging the Commissioner of Social Security' denial of her request for social security disability and supplemental security benefits.

The Commissioner has filed a motion to dismiss this case because of it was untimely filed. Under the Social Security Act, 42 U.S.C. § 405(g) a party who is denied benefits must file a civil action challenging the denial within sixty days after the mailing of the notice of the Social Security Appeals Council's decision. The term "mailing" has been construed by the Commissioner to mean the date of receipt by the individual seeking benefits. See 20 C.F.R. §§ 404.981, 416.1481. The date of receipt is presumed to be five days after the date of the notice unless the individual makes a reasonable showing to the contrary. See 20 C.F.R. §§ 404.901, 416.1401, 422.210(c).

The Appeal Council's sent its notice denying benefits on November 28, 2009. Because the case was not filed until September 17, 2010 the Commissioner filed a motion to dismiss the case as untimely on December 30, 2010. Willard has not challenged the Commissioner's motion or the fact that her complaint was filed out of time.

Accordingly,

**IT IS HEREBY ORDERED** that the referral of this matter to United States Magistrate Judge Terry I. Adelman is withdrawn.

**IT IS FURTHER ORDERED** that the Commissioner's motion to dismiss this case as untimely [#14] is **GRANTED**.



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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 4th day of March, 2011.